IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 18897 of 2007(Y)

PETITIONER:

S.SYED MUHAMMED,
(EX-SENO-TYPIST, TKMCE), D/O.DAYED ALI SAHIB,
AGED 71 YEARS, 65 VIKAS NAGAR, TKM COLLEGE P.O.
KOLLAM - 691 005.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA
SMT.S.SUJA

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY, HIGHER EDUCATION (J) DEPARTMENT, THIRUVANANTHAPURAM.

3. DIRECTOR OF TECHNICAL EDUCATION, THIRUVANANTHAPURAM.

4. THANGAL KUNJU MUSALIAR COLLEGE OF ENGINEERING, KOLLAM, REPRESENTED BY ITS PRINCIPAL.

BY GOVT. PLEADER SRI. A.J. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. BASHEER, J.

W.P.(C). NO. 18897 OF 2007

Dated this the 28th day of June, 2007

J U D G M E N T

Petitioner had availed of leave without allowance while he was working as a Steno typist in an aided college under the Directorate of Technical Education, Thiruvananthapuram, from January 1, 1977 to December 31, 1981. According to the petitioner, he had rejoined duty after expiry of his leave on January 1, 1982. Shortly thereafter, he had gone abroad again to resume his duties there, after filing another application for leave without allowance. Petitioner was under the bonafide belief that his second application for leave would be allowed. But, it appears that respondent No.2 did not choose to do so, with the result, the petitioner was treated as an unauthorised absentee. Proceedings were initiated against him and he was dismissed from service. After a few years he came back to the country and applied for compassionate allowance.

2. Grievance of the petitioner is that the Government has taken a decision against him on the application, as though it was

a request for pension. More importantly, the order was passed by respondent No.2 without affording any opportunity to the petitioner to be heard. A perusal of Ext.P9 order, which is impugned in this writ petition, does not show whether the petitioner was heard or not. In the above facts and circumstances, I am of the view that it will be only fair if the petitioner is afforded an opportunity to be heard by the Government. To that extent alone petitioner is entitled to succeed.

Therefore, Ext.P9 is quashed. Respondent No.2 is directed to consider and pass orders on the application submitted by the petitioner for compassionate allowance strictly on its merit and in accordance with law after affording him an opportunity to be heard. This shall be done, as expeditiously as possible, at any rate within four months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007